

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE FOR THE
STATE OF TENNESSEE

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SECRETARY OF STATE

TENNESSEE SECURITIES DIVISION,)
Petitioner,)
)
v.)
)
ACI, INC.,)
CAPITAL ENHANCEMENT)
OPPORTUNITIES,)
UNITED SERVICES,)
PROSPER INTERNATIONAL LEAGUE LTD.,)
OFFSHORE ROLL PROGRAM REPORT)
NUMBER 5599,)
FASTGOLD.NET, and)
JOHN L. HILL, II,)
Respondents.)

No.: 12.06-028558J

AGREED ORDER

The Tennessee Securities Division ("Division"), Petitioner, and Respondents ACI, Inc., Capital Enhancement Opportunities, United Services, Prosper International League, Ltd., Offshore Roll Program Report Number 559 and John L. Hill, II (hereinafter collectively referred to as the "Respondents") agree to the entry of this Agreed Order in accordance with the Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.*, which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

GENERAL STIPULATIONS

1. It is expressly understood by all parties that this Agreed Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Agreed Order is executed by the Respondents for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Agreed Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Agreed Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondents fully understand that this Agreed Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts or omissions not specifically addressed in this Agreed Order for facts and/or omissions that do not arise from the facts or transactions herein addressed, nor does it preclude additional proceedings by the Commissioner against the Respondents based upon these facts or transactions herein addressed by some other Division of the Commissioner.

4. Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreed Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Agreed Order by the Commissioner.

5. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. §§ 48-2-101, *et seq.* ("Act"), places the responsibility for the administration of the Act on the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. § 48-2-115.

FINDINGS OF FACT

6. John Lewis Hill, II, ("Hill") is a citizen and resident of the State of Tennessee, whose address is located at 717 Claybrook Drive, Savannah, Tennessee 38372. Hill has never been registered as a broker-dealer, agent of a broker-dealer, investment adviser or agent of an investment adviser with the Division.

7. ACI, Inc. ("ACI") is a business entity whose address and principal place of business is 717 Claybrook Drive, Savannah, Tennessee 38372. ACI has never been registered as a broker-dealer, agent of a broker-dealer, investment adviser or agent of an investment adviser with the Division.

8. Capital Enhancement Opportunities ("CEO") is a business entity whose address and principal place of business is 30 Topsy Lane, Savannah, Tennessee 38372. Hill is the president, Chief Executive Officer, and "Portfolio Manager" of CEO. CEO has never been registered as a broker-dealer, agent of a broker-dealer, investment adviser or agent of an investment adviser with the Division.

9. United Services ("UServ") is a business entity whose address and principal place of business is 717 Claybrook Drive, Savannah, Tennessee 38372. UServ has never been registered as a broker-dealer, agent of a broker-dealer, investment adviser or agent of an investment adviser with the Division.

10. Profit International League Limited ("PILL") is a business entity whose address and principal place of business is P.O. Box 1870, Winter Park, Florida 32970-1870. PILL has never been registered with the Division as a broker-dealer, investment adviser or agent thereof.

11. Offshore Roll Program Report Number 5599 ("ORPR") is a business entity with its principal place of business located at 30 Topsy Lane, Savannah, Tennessee 38372. ORPR has never been registered with the Division as a broker-dealer, investment adviser or agent thereof.

12. Fastgold.Net ("FG") is a business entity whose address and state of incorporation is located at 330 South Decatur, Suite 214, Las Vegas, Nevada 89107. FG has never been registered with the Division as a broker-dealer, investment adviser or agent thereof.

13. Hill attempted to operate a prime bank note and/or promissory note scheme via the Internet and, through email, solicited members of the public to invest with ACI, CEO, UServ, PILL, and/or ORPR.

14. Through advertisements and email, Hill represented to members of the public that they can earn returns of thirty-six percent (36%) to sixty percent (60%) on investments with ACI, CEO, UServ, PILL, and/or ORPR.

15. Hill also represented through his advertisements, website and email through ACI, CEO, UServ, PILL, and/or ORPR that investors can borrow money through "self-liquidating loans" without ever repaying it and without pledging any collateral for such loans.

16. Hill represented to members of the public that investors can earn from ten percent (10%) to one hundred percent (100%) returns on "small investments" through ACI, CEO, UServ, PILL, and/or ORPR.

17. Through advertisements and email, Hill solicited Robert Heisse ("Heisse"), an investigator with the Division, to participate in investment programs through ACI, Inc., CEO, and/or UServ.

18. Hill's emails and solicitations to Heisse included promises that an investment with CEO would yield a sixty percent (60%) return annually. In addition, Hill's emails and solicitations to Heisse included a representation that CEO was registered with the SEC.

19. The prospectus from CEO states that CEO manages investments for high net worth clients and that it is licensed by the state of Tennessee as an investment adviser.

20. Heisse received a number of solicitations from Hill, CEO, UServ and ACI, in which he was asked to invest various sums of money in investments offered by Hill, CEO, UServ and ACI.

21. Hill has previously engaged in the offer of unregistered securities in the state of Illinois and was the subject of a Temporary Order of Prohibition ("Illinois Order") from offering or selling securities in Illinois which was entered by the Illinois Secretary of State on July 12, 2001. *See In the Matter of Asteroca SA, Its Officers, Directors, Employees, Agents Affiliates, Successors and Assigns and Johnny Hill*, 2001 WL 1764677 (Ill. Sec. Dept. 2001).). The Illinois Order became final on August 14, 2001.

22. Beginning in or around April of 2002 and continuing through June of 2002, CEO and Hill sold unsecured promissory notes ("Notes") to numerous persons and entities within and without the United States for "investment purposes." The Notes were not registered with the Division and were not subject to any available exemptions under the Act. On each of the Notes, Hill signed his name on behalf of CEO.

23. The Notes stated that CEO intended to use the proceeds of the investments in the Notes to invest in "capital enhancement programs." However, the Notes did not specify what the "capital enhancement programs" actually were to be and the Notes did not provide any details as to how CEO intended to generate the high rates of return on the investors' investments with CEO.

24. The Notes also stated that the investors' investments were to be deposited into a "non-depletion custodial account arrangement with Bank of America" and that CEO would retain control of the investors' funds at all times.

25. On or about May 2nd, 2002, CEO sold an unsecured promissory note ("S. Tilson Note") to Shane Tilson ("S. Tilson"), in the amount of two thousand dollars (\$2,000.00) wherein CEO promised to pay S. Tilson a monthly interest rate of forty percent (40%) plus ten percent (10%) of "all proceeds received over 40% per month from the PROGRAM PROVIDER on a monthly basis."

26. According to the S. Tilson Note, S. Tilson is a resident of Savannah, Tennessee. The S. Tilson Note did not disclose the manner in which CEO would pay S. Tilson the promised returns or from what source S. Tilson would be paid the promised returns. The S. Tilson Note did not contain a term defining the period of the investment and did not specify at what point in time the principal of the investment was to be returned to S. Tilson by CEO.

27. On or about May 3rd, 2002, CEO sold an unsecured promissory note ("Shelby Note") to Jason Shelby ("Shelby"), in the amount of one thousand dollars (\$1,000.00) wherein CEO promised to pay Shelby a monthly interest rate of forty percent (40%) plus ten percent (10%) of "all proceeds received over 40% per month from the PROGRAM PROVIDER on a monthly basis."

28. According to the Shelby Note, Shelby is a resident of Savannah, Tennessee. The Shelby Note did not disclose the manner in which CEO would pay Shelby the promised returns or from what source Shelby would be paid the promised returns. The Shelby Note did not contain a term defining the period of the investment and did not specify at what point in time the principal of the investment was to be returned to Shelby by CEO.

29. On or about April 29th, 2002, CEO sold an unsecured promissory note ("Kaplan-West Note") to Kenny C. Kaplan ("Kaplan") and Donny West ("West"), in the amount of ten thousand dollars (\$10,000.00) wherein CEO promised to pay Kaplan and West a monthly interest rate of forty percent (40%) plus ten percent (10%) of "all proceeds received over 40% per month from the PROGRAM PROVIDER on a monthly basis."

30. According to the Kaplan-West Note, Kaplan and West are residents of Memphis, Tennessee. The Kaplan-West Note did not disclose the manner in which CEO would pay Kaplan and West the promised returns or from what source Kaplan and West would be paid the promised returns. The Kaplan-West Note did not contain a term defining the period of the investment and did not specify at what point in time the principal of the investment was to be returned to Kaplan and West by CEO.

31. Respondents have provided information to the Division which indicates that Hill has, on or about September 23, 2002, fully refunded the investments to the investors described herein and in the Division's Amended Petition that is filed with the Administrative Procedures Division of the Tennessee Secretary of State under the above docket number.

32. The sales by the Respondents of the Notes described herein and in the Division's Amended Petition violated the Summary Order.

CONCLUSIONS OF LAW

33. Pursuant to Tennessee Code Annotated § 48-2-115(a), the responsibility for the administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

34. Pursuant to Tennessee Code Annotated § 48-2-116, the Commissioner may make, promulgate, amend, and rescind such orders as are necessary to carry out the provisions of this Act and that such order is in the public interest, necessary for the protection of investors and consistent with the purposes fairly intended by the policy and provision of the Act

35. Tenn. Code Ann. § 48-2-102(16) provides that:

“Security” means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, a life settlement contract, as defined in § 56-50-102, or any fractional or pooled interest in a life insurance policy or life settlement contract, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. . . .(emphasis added)

36. In *King v. Pope*, 91 S.W.3d 314, 321 (Tenn. 2002), the Tennessee Supreme Court held that an investment contract must satisfy the following four elements:

(1) An offeree furnishes initial value to an offeror, and (2) a portion of this initial value is subjected to the risks of the enterprise, and (3) the furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value, will accrue to the offeree as a result of the operation of the enterprise, and (4) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

37. Tenn. Code Ann. § 48-2-104 provides that:

(a) It is unlawful for any person to sell any security in this state unless:

- (1) It is registered under this part;
- (2) The security or transaction is exempted under § 48-2-103; or
- (3) The security is a covered security.

(b) The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

38. The facts stated above demonstrate that: (1) the contracts sold by the Respondents meet the definition of investment contracts as defined in *King*, 91 S.W.3d at 321, and are therefore securities under the Act, pursuant to Tenn. Code Ann. § 48-2-102(16); (2) that Respondents have sold securities in Tennessee without first having registered such securities with the Division, as required by the Act; (3) that such securities are not subject to any exemptions under the Act; and (4) that such securities are not "covered" securities, as defined under the Act.

39. Tennessee Code Ann. § 48-2-109(a) provides that it is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under this part.

40. Tenn. Code Ann. § 48-2-109(e) provides that the Commissioner may, after notice and an opportunity for a hearing under the Uniform Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000.00) per violation.

41. Tenn. Code Ann. § 48-2-109(c) provides, in pertinent part, that it is unlawful for any person to transact business from or in this state as an investment adviser unless: (1) the person is registered as an investment adviser under Title 48, Chapter 2, Part 1; (2) the person is required to register as an investment adviser pursuant to § 203 of the Investment Advisers Act of 1940, provided that an initial notice filing is filed with the Commissioner ten (10) days prior to the person's acting as an investment adviser as defined by Tenn. Code Ann. § 48-2-102(9); or (3) the person's only clients in this state are insurance companies.

42. Tenn. Code Ann. 48-2-109(c) provides that the Commissioner may, after notice and an opportunity for a hearing under the Uniform Procedures Act, compiled in title 4, chapter 5, impose a fine against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

43. Tenn. Code Ann. § 48-2-121(a) states, in pertinent part, that it is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to employ any device, scheme, or artifice to defraud, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

44. Based on the Findings of Fact and Conclusions of Law contained herein, the Commissioner concludes that the Respondents have violated the Act, specifically at Tenn. Code Ann. §§ 48-2-104, 109 and 121.

45. Respondents admit the general stipulations, findings of fact and conclusions of law contained herein and hereby also acknowledge the Commissioner's authority to administer said statute and concede that the Commissioner's interpretation of the statute is reasonable and enforceable. Therefore, Respondents, in order to avoid any further expenses or costs associated with litigating this matter, hereby desire to enter into this Agreed Order.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and the waiver by Respondents of their rights to a hearing and appeal under the Act and Tennessee's Uniform Administrative Procedures Act, Tennessee Code Ann. §§ 4-5-101 *et seq.*, and the admission by the Respondents of the jurisdiction of the Commissioner, the Commissioner finds that the Respondents have agreed to the entry of this Order and that this Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, pursuant to Tennessee Code Ann. § 48-2-116 of the Act that:

1. Respondents, either collectively or individually, shall not offer or sell securities from, in or into this State at any time from the date of the entry of this Order under any circumstances.
2. Respondents, either collectively or individually, shall not register or attempt to register as a broker-dealer, issuer-dealer, investment adviser or agent thereof at any time from the date of the entry of this Order under any circumstances.
3. Respondents, either collectively or individually, shall not, in any manner whatsoever, represent to any person or entity that they, collectively or individually, or by or through any person, entity or agent, may act as a broker-dealer, investment adviser or agent thereof at any time from the date of the entry of this Order under any circumstances.

4. Respondents, either collectively or individually, shall not, in any manner whatsoever, sell, offer, distribute or otherwise disseminate from, in or into this State any investment advice of any kind to any person or entity at any time or under any circumstance from the date of entry of this Order.

5. Respondents agree to cease and desist from any further violations of the Act.

4. The Respondents agree that should they violate any provision or term of this Agreed Order, they consent to the immediate imposition of the Summary Cease and Desist Order entered by the Commissioner in this matter, including the full amount of the civil penalties assessed against them therein, and that such imposition of the civil penalties as provided in the Summary Cease and Desist Order shall be cumulative and in addition to any further administrative or civil penalties and any other civil, administrative or criminal action taken by or referred by the Division.

IT IS FURTHER ORDERED that this Agreed Order represents the complete and final resolution of and discharge of all administrative and civil, claims, demands, actions and causes of action by the Division against the Respondents for violations of the Act which relate specifically to all actions and/or omissions by Respondents which are so described in this Agreed Order. This Agreed Order shall not be construed to apply to any other facts or circumstances other than to the actions and/or omissions of the Respondents as set forth herein.

This Agreed Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, the Respondents affirmatively state that they have freely agreed to the entry of this Agreed Order, that they have been advised that they may consult legal counsel in this matter, and have had the opportunity to consult with legal counsel should they have desired to do so, that they waive their right to a hearing on the matters underlying this Agreed Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof.

The parties, by signing this Agreed Order, affirmatively state their agreement to be bound by the terms of this Agreed Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Agreed Order, are binding upon them.

IT IS SO ORDERED.


Entered this the 18th day of June, 2003.


Paula A. Flowers
Paula A. Flowers, Commissioner
Department of Commerce and Insurance


APPROVED FOR ENTRY:

John L. Hill
By: John L. Hill
Title: President
~~ACI, Inc.~~ Capital Enhancement Opportunities,
United Services, ~~Prosper League Int'l Ltd., and~~
~~Offshore Roll Report 5599~~
Savannah, Tennessee 38372

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615 741 2199

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing have been served upon the persons listed below by delivering same or posting same in the United States Mail, First Class:

Nader Baydoun, Esq.
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150 Fourth Avenue North
Nashville, Tennessee 37219-2425

This the 19th day of June, 2003.


Kevin C. Bartels
Certifying Attorney